

SUNSHINE REFORM TASK FORCE MEETING MINUTES

**Thursday, June 7, 2007
6:00pm – 9:00pm**

City Hall, W118-119

Present: Ken Podgorsek, United Neighborhoods of SCC; Ed Rast, Strong Neighborhoods Initiative PAC; Virginia Holtz, Willow Glen Neighborhood Assoc.; Margie Matthews, Former Councilmember; Mary Ann Ruiz, Parks and Recreation Commission; Karl Hoffower, Citizens Commission on Human Rights; Brenda Otey, At Large-Representative; Joan Rivas-Cosby, Five Wounds/Brookwood Terrace Neighborhood Advisory Committee; Bert Robinson, San José Mercury News; Bobbie Fischler, League of Women Voters; Judy Nadler, Markkula Center for Applied Ethics; Bob Brownstein, South Bay Labor Council; Edward Davis, Orrick Law Firm (Legal Counsel).

Absent: Dan Pulcrano, Silicon Valley Leadership Group; Dave Zenker, Falls Creek Neighborhood Association; Nanci Williams, San José/Silicon Valley Chamber of Commerce.

Staff: Lee Price, City Clerk; Lisa Herrick, Senior Deputy City Attorney; Dan McFadden, Interim Deputy City Manager; Eva Terrazas, Office of the City Manager/Redevelopment Agency; Tom Manheim, Office of the City Manager.

I. Approval of May 17, 2007 Meeting Minutes

Upon a motion by Mary Ann Ruiz, seconded by Ken Podgorsek, the May 17, 2007, minutes were approved with two abstentions, Bobbie Fischler and Bob Brownstein (absent 5/17/07).

II. Comments from the Chair

Chair Rast noted Item IV on the 6/7/07 meeting agenda, Sunshine Reform Task Force Phase I Report & Recommendations, was discussed during the 5/30/07 and 6/6/07 Rules & Open Government Committee meetings.

III. Review of Meeting Material

Staff provided an overview of the documents for the meeting.

IV. SRTF's Phase I Report and Recommendations

A. Update on 5/30/07 & 6/6/07 Rules and Open Government Committee Meeting

The Mayor's Office and staff for the SRTF proposed a joint meeting for the Task Force and Rules Committee on June 27, 2007. Comments from the Rules Committee on the Phase I Report will be submitted to staff by June 15, 2007. Staff will work with the Subcommittee chairs to provide written responses to the questions received. Judy Nadler expressed concern that some Task Force members and Rules Committee members will

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miss the joint session because of plans to attend the Ethics and Leadership Camp for Public Officials on June 27-28, 2007.

Public Comment: Dean Munro, Mayor's Liaison to the Task Force, stated that it will not be a problem if a few members from the Rules Committee and Task Force cannot attend the joint meeting. Mr. Munro also wanted to make comments on the memo Bert Robinson distributed before the Task Force meeting.

Virginia Holtz reminded the Task Force that memos distributed on the night of a Task Force meeting are not to be discussed during the meeting.

The Task Force made the following comments on the Mayor's memo to the Task Force:

Bob Brownstein responded to the Mayor's comments concerning Section 3.3C (the differences between the terms "potential use of property" and "proposed development". He clarified that closed sessions should only be used to determine the price of a project; all other information must be discussed in open session.

Bert Robinson suggested that the Mayor's recommendation about calendars in Section 4.3 be modified so that senior staff could denote a "personnel matter" as opposed to not disclosing the meeting at all.

Task Force discussion regarding the recording of closed sessions ensued.

Dan McFadden noted that the biggest difference between the Mayor's recommendations and staff's preliminary response to the SRTF Phase I Report and Recommendations is the taping of closed sessions. Staff recommended that the taping of closed session begin when a protocol for disclosing the tapes is established. The Mayor recommended beginning to tape closed session immediately but releasing tapes only after a protocol has been established. Without a specific protocol, the default is that a majority of the Council could vote to release the tape/s of a closed session.

Ken Podgorsek responded that even though a process to release closed session recordings currently exists, another process could be developed and implemented.

Judy Nadler noted that she has serious concerns about recording closed sessions and pointed out that many groups of people – not just the media – will be interested in the release of those recordings.

Public Comment: Dean Munro, Mayor's Liaison to the Task Force, advised that the Mayor is not likely to change his recommendation to record closed sessions.

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Chair Rast, referencing the Mayor's recommendation regarding access to City lobbyists' activity reports, argued that Section 1F was important to include because it provides the public access to lobbyist reports.

Bob Brownstein pointed out that a City employee who lobbies will be treated differently from all other City employees.

B. Public Meeting Provisions: Discussion and Action on the Categorization of Entities

Staff reviewed the matrix prepared by staff which listed the criteria for determining whether an entity would be subject to the Task Force's recommendations. Lisa Herrick emphasized that the Rules Committee had difficulty with the criteria in the definitions and instructed staff to work with the Task Force to determine which groups staff and the Task Force agreed should be categorized as policy bodies and which groups staff and the Task Force did not agree should be categorized as policy bodies. Staff informed the Task Force that groups listed in bold are entities that staff believes make final decisions about policy or administrative matters.

The Task Force made the following comments/recommendations:

Ken Podgorsek remarked that a vast majority of the bodies in San José are advisory bodies that do not make policy. He suggested deleting "advisory bodies" in the definition of policy body. Section F of the definition of Policy Body is difficult from a neighborhood standpoint; Mr. Podgorsek suggested that groups listed under Section F should be categorized as ancillary bodies.

Virginia Holtz advocated that Friends of the Guadalupe Gardens should not be listed under Policy Body. This group was not created by the City, but does work on the City's behalf, she concluded.

Bob Brownstein stated that policy decisions do not equate to final decisions. He disagrees with staff's recommendation that the majority of the policy bodies be recategorized as ancillary bodies.

Ed Davis stated that the definitions may not be clear; suggested Section A of the definition of Policy Body should be changed.

Bert Robinson commented Items A-C under Policy Body are directly analogous to the rules of the Brown Act. Lisa Herrick said that the requirements proposed by the Task Force – even for ancillary bodies – exceed the Brown Act.

Ken Podgorsek proposed the following changes to the definition/criteria of Policy Body:

- Remove "or advisory" from Section A
- Add simple language to Section C
- Eliminate Sections E2 and F

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Bob Brownstein and Ed Davis recommended that the Council Committees, listed as 6-10 in Section A of the definition of “Policy Body” are in fact policy bodies.

Staff reminded the Task Force about Council’s intent on how the Council Committees operate. A discussion ensued on how committee items will be noticed (i.e., policy body versus ancillary body). Judy Nadler stated that the Council should make the final decision on the number of days Council Committee meetings must be noticed.

Upon a motion by Bobbie Fischler, seconded by Judy Nadler, the Task Force approved Policy Body, Section A, Items 1-10. Motion passed with 2 opposed (Rivas-Cosby and Matthews).

Upon a motion by Bert Robinson, seconded by Ken Podgorsek, the Task Force approved Policy Body, Section B, Items 1-3. Motion passed with one opposed (Matthews).

Staff categorized the following committees under Policy Body, Section C:

No.	Committee	Category
1.	Advisory Commission on Rents	Ancillary body
2.	Airport Commission	Ancillary body
3.	Airport Noise Advisory Committee	Ancillary body
4.	Appeals Hearing Board	Policy body
5.	Arts Commission	Ancillary body
6.	Arts Commission, Exec. Committee	Ancillary body
7.	Arts Commission, Public Art Committee	Ancillary body
8.	Bicycle and Pedestrian Advisory Committee	Ancillary body
9.	Convention and Visitors Bureau	Cannot be clearly defined; review at a later date
10.	Coyote Valley Task Force	Ancillary body
11.	Deferred Compensation Advisory Committee	Policy body
12.	Disability Advisory Committee	Ancillary body
13.	Domestic Violence Advisory Board	Ancillary body
14.	Downtown Parking Board	Ancillary body
15.	Early Care and Education Commission	Ancillary body
16.	Elections Commission	Policy body
17.	Federated Employees Retirement Board	Policy body
19.	Federated Employees Retirement Board, Investment Committee	Ancillary body
20.	Federated Employees Retirement Board, Investment Committee of the Whole	Ancillary body
21.	Federated Employees Retirement Board, Real Estate Committee	Ancillary body

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22.	Healthy Neighborhood Venture Fund	Ancillary body
23.	Historic Landmarks Commission	Policy body
24.	Housing & Community Development Advisory Committee	Ancillary body
25.	Human Rights Commission	Ancillary body
26.	Independent Hearing Panel (LEA)	Policy body
27.	Library Commission	Ancillary body
28.	Mobile Home Advisory Commission	Ancillary body
29.	Parks and Recreation Commission	Ancillary body
30.	Police and Fire Retirement Board	Policy body
31.	Police and Fire Retirement Board, Investment Committee	Ancillary body
32.	Police and Fire Retirement Board, Investment Committee of the Whole	Ancillary body
33.	Police and Fire Retirement Board, Real Estate Committee	Ancillary body
34.	Public Safety Bond Citizen Oversight Committee	Ancillary body
35.	San José Beautiful	Ancillary body (delete Item F4, because San José Beautiful is already listed as Item C35)
36.	Senior Citizen Advisory Commission	Ancillary body
37.	Silicon Valley Workforce Investment Network (Work2future)	Ancillary body
38.	SJ/SC Housing Authority	Policy body
39.	SJ/SC Treatment Plant Advisory Committee	Policy body
40.	Small Business Development Commission	Ancillary body
41.	Strong Neighborhoods Initiative Project Advisory Committee	Ancillary body
42.	Sunshine Reform Task Force	Ancillary body
43.	Traffic Appeals Commission	Policy body
44.	Youth Commission	Ancillary body

NOTE: The Downtown Working Group and the Parking and Traffic Committee are not listed, though they should be categorized as ancillary bodies.

Upon a motion by Ken Podgorsek, seconded by Bob Brownstein, the Task Force approved as policy bodies numbers 4, 11, 16-17, 39, and 43 as recommended by staff in Section C of the definition of Policy Body. Motion passed unanimously.

A motion was made by Margie Matthews and seconded by Joan Rivas-Cosby to accept the rest of staff's recommendations for Section C of the definition of "Policy Body". Motion failed 3:9.

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Upon a motion by Bob Brownstein, seconded by Bert Robinson, the Task Force approved as policy bodies all remaining groups in Section C of the definition of “Policy Body”, with the exception of standing committees, which were previously reclassified to “Ancillary Body”. Motion passed with 4 opposed (Ruiz, Podgorsek, Matthews and Rivas-Cosby).

A lengthy discussion ensued on the practicality of moving the committees listed under Policy Body, Section D to Ancillary Body, as well as moving the criteria of Section D over to the definition of Ancillary Body.

Upon a motion by Margie Matthews, seconded by Ken Podgorsek, the Task Force agreed to move Section D of the definition of Policy Body to the definition of Ancillary Body and categorize the groups listed in Section D of Policy Body as ancillary bodies. Motion passed unanimously.

Upon a motion by Ken Podgorsek, seconded by Bob Brownstein, the Task Force concurred that the San Jose Arena Authority should be considered a “Policy Body”, under Section E1. Motion passed unanimously.

Staff identified the following entities as meeting the criteria of Section E(2) of the definition of Policy Body:

<u>No.</u>	<u>Committee</u>	<u>Category</u>
1.	Arena Management Corp.	Non-governmental body
2.	Children’s Discovery Museum of San José	Non-governmental body
3.	Friends of the Guadalupe	Does not fit any of the definitions
4.	Green Team of San José	Non-governmental body
5.	Happy Hollow Park and Zoo Corporation	Does not fit any of the definitions
6.	History San José	Non-governmental body
7.	Mexican Heritage Corporation	Non-governmental body
8.	Norcal Waste Systems of San José	Non-governmental body
9.	Our City Forest	Does not fit any of the definitions
10.	San José Downtown Association	Does not fit any of the definitions
11.	San José Museum of Art	Non-governmental body
12.	San José Sports Authority	Ancillary body
13.	Taxi San José	Does not fit any of the definitions
14.	Team San José	Non-governmental body
15.	Tech Museum of Innovation	Non-governmental body

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The Task Force made the following comments on Policy Body, Section E(2):

1. Bert Robinson stated that the purpose of E(2) is to catch a loophole in E1. Mr. Robinson suggested it is more important to notice the function of a group rather than label the group.
2. Margie Matthews disagreed with Bert Robinson's statement, because Section E(2) describes public-private partnerships.
3. Bob Brownstein commented that E(2) regulates by function.

Upon a motion by Bob Brownstein, seconded by Ken Podgorsek, the Task Force agreed to delete Section E(2) of the definition of Policy Body; accept staff's recommendations about the categorization of the entities listed; and refer to staff the appropriate designation of the San José Downtown Association to ensure reasonable oversight. Motion passed with 1 opposed (Robinson).

Staff recommended categorizing the entities listed in Section F of the definition of Policy Body as ancillary bodies.

Upon a motion by Ken Podgorsek, seconded by Virginia Holtz, the Task Force accepted staff's recommendations on Section F of the definition of Policy Body. Motion passed unanimously.

Lisa Herrick mentioned that Community Project Action Committees (CPACs) may fall under the definition of Ancillary Body.

Upon a motion by Bert Robinson, seconded by Ken Podgorsek, the Task Force approved staff's recommendations on Section A of the definition of Ancillary Body and accepted CPACs as ancillary bodies. Motion passed unanimously.

Lisa Herrick recommended adding Policy Activities League and San José Giants to the entities listed in Section A of the definition of Non-governmental Body.

Upon a motion by Virginia Holtz, seconded by Bert Robinson, the Task Force approved staff's recommendations on Section A of the definition of Non-governmental Body. Motion passed unanimously.

Lisa Herrick recommended including a California Waste Systems, Garden City Sanitation, Conservation Corps, and few street maintenance vendors (e.g., Universal Maintenance, Bond Blacktop, Goodwill) to the entities listed in Section B of the definition of Non-governmental Body.

Upon a motion by Bert Robinson, seconded by Margie Matthews, the Task Force approved staff's recommendations on Section B of the definition of Non-governmental Body. Motion passed unanimously.

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V. Phase II Meeting Logistics & Administration

No discussion on this item.

VI. Role of the Enforcement Committee

No discussion on this item.

VII. Phase II Work Plan

No discussion on this item

VIII. Upcoming Agenda and Work Plan

The Task Force agreed to cancel the June 21, 2007 meeting.

The Task Force identified the members of the Phase II Subcommittees as outline below.
The Public Records Subcommittee will begin to meet during the recess to discuss the scope of its work.

<u>Subcommittee</u>	<u>Members</u>
Public Records	Bert Robinson, Dan Pulcrano, Karl Hoffower, Virginia Holtz, Bobbie Fischler, Brenda Otey
Technology	Dan Pulcrano, Ed Rast, Karl Hoffower
Administration & Accountability	Ken Podgorsek, Bob Brownstein, Bobbie Fischler, Ed Rast
Ethics	Judy Nadler, Dave Zenker, Mary Ann Ruiz

IX. Public Comment – None additional

Upon a motion by Ken Podgorsek, seconded by Margie Matthews, the Task Force adjourned the June 7, 2007, meeting at 9:40 p.m.